

SENATE BILL NO. 197

INTRODUCED BY J. TESTER

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A PERSON WHO WILDCRAFTS TO OBTAIN WRITTEN PERMISSION OR A PERMIT PRIOR TO WILDCRAFTING; PROVIDING EXEMPTIONS TO THE REQUIREMENT OF WRITTEN PERMISSION OR A PERMIT; DESCRIBING THE REQUIREMENTS FOR A BUYER OF WILDCRAFTED PLANT MATERIAL; PROVIDING A RESTRICTION ON THE LIABILITY OF A LANDOWNER THAT ALLOWS WILDCRAFTING ON THE LANDOWNER'S PROPERTY; ESTABLISHING VIOLATIONS; ~~AND PROVIDING PENALTIES;~~ AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Purpose.** (1) The purpose of [sections 1 through 7] is to:

~~(1)(A)~~ encourage the growth of a statewide sustainable wildcrafting industry that encourages stewardship of the wild plant natural resources of the state by requiring a person who is wildcrafting for commercial purposes to obtain a permit or permission in a written form before the person can wildcraft ~~regardless of land ownership~~ and by providing enforcement procedures;

~~(2)(B)~~ require buyers to be accountable for wildcrafted plant material that they purchase by requiring recordkeeping; and

~~(3)(C)~~ establishing enforcement procedures.

(2) THE STATE RECOGNIZES ITS LIMITED JURISDICTION WITHIN THE INDIAN RESERVATIONS IN MONTANA AND ACKNOWLEDGES AND RESPECTS THE GOVERNMENT-TO-GOVERNMENT RELATIONSHIP BETWEEN MONTANA AND THE TRIBES WITHIN ITS BORDERS. IT IS THE LEGISLATURE'S INTENT THAT THIS BILL BE IMPLEMENTED WITHIN CURRENT JURISDICTIONAL LIMITATIONS. THE TRIBES ARE INVITED TO ENTER INTO STATE-TRIBAL COOPERATIVE AGREEMENTS WITH MONTANA TO PROVIDE FOR BROADER IMPLEMENTATION.

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 7], the following definitions apply:

(1) "Buyer" means a person who purchases or acquires wildcrafted plant material, other than materials acquired directly from the property owner, FOR THE PURPOSES OF RESALE.

(2) "Commercial purposes" means the harvest of:

~~——(a) wildcrafted plant material for the purpose of selling, trading, or otherwise exchanging the material for profit; or~~

~~——(b) an amount of wildcrafted plant material that is greater than the amount that could realistically be used by one person for that person's use within a period of 1 year.~~

(3) "Landowner" means a person or entity of any nature, whether private, governmental, or quasi-governmental, and includes the landowner's agent, tenant, lessee, or occupant, a grantee of a conservation easement, a water users' association, an irrigation district, a drainage district, or persons or entities in control of property or with an agreement to use or occupy property.

(4) "OTHER JURISDICTIONAL ENTITY" MEANS THE FEDERAL GOVERNMENT OR A TRIBAL GOVERNMENT.

~~(4)~~(5) "Person" includes an individual, partnership, association, corporation, and any other body or group of persons, whether incorporated or not and regardless of the degree of formal organization.

~~(5)~~(6) "Property" means land, roads, water, watercourses, and private ways. The term includes any improvements, buildings, structures, machinery, and equipment on property.

~~(6)~~(7) "Seller" means a person who sells wildcrafted plant material.

~~(7)~~(8) "Transport" means the physical conveyance of wildcrafted plant material away from the site of wildcrafting and includes but is not limited to transportation by:

(a) a motor vehicle designed for use on improved roadways;

(b) a boat, barge, raft, or other water vessel; or

(c) an airplane, helicopter, balloon, or other aircraft.

~~(8)~~(9) (a) "Wild craft" means to collect, harvest, or separate by cutting, prying, picking, peeling, breaking, pulling, digging, splitting, or otherwise removing uncultivated plants or plant parts from their physical connection or point of contact with the ground or vegetation upon which they are growing or from the place or position where they lay for commercial purposes.

(b) The term does not include the collection of:

(i) plant material used for a campfire; or

(ii) amounts intended for personal consumption.

~~(9)~~(10) "Wildcrafted plant material" means any plant or part of any plant species that is not cultivated and that is growing wild on any lands in Montana.

~~(10)~~(11) "Wildcrafter" means a person who wildcrafts plants.

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2 **NEW SECTION.** **Section 3. Written permission or permit to wildcraft required.** (1) It is unlawful
3 for any person to wildcraft or transport wildcrafted plant material without having in the person's
4 possession a bill of sale, a signed, written permission form, or a permit from a landowner to wildcraft from
5 the property from which the material is wildcrafted. The written permission or permit must include the
6 following:

7 (a) the date the permission is given or the permit is issued;

8 (b) the name, address, telephone number, and signature of the person granting the permission or
9 issuing the permit;

10 (c) the name, address, and telephone number of the person that is granted the permission or
11 issued the permit;

12 (d) the common name ~~and~~ OR scientific name of the plant to be wildcrafted;

13 (e) the amount and specified part of the plant material to be wildcrafted;

14 (f) a description of the location on the property from which plant material may be wildcrafted;

15 (g) the expiration date of the permission or permit; and

16 (h) the license plate number of the vehicle to be used for the purposes of wildcrafting.

17 (2) Written permission given or a permit issued to the person supervising a crew of wildcrafters
18 is an acceptable substitute for individual permission or permits.

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20 **NEW SECTION.** **Section 4. Exemption from written permission or permit requirement.** The
21 following are exemptions to the requirements of [section 3]:

22 (1) A permit issued by a ~~federal or state~~ land management agency, another government agency,
23 or a ~~tribal office~~ ANY OTHER JURISDICTIONAL ENTITY in the state is acceptable in lieu of the written permission
24 if the wildcrafting occurs on land managed by the entity issuing the permit.

25 (2) A landowner OR OTHER JURISDICTIONAL ENTITY does not need written permission or a permit to
26 wildcraft on property that the landowner OR OTHER JURISDICTIONAL ENTITY owns.

27 (3) Written permission or a permit is not required for the amount of wildcrafted plant material that
28 the landowner OR OTHER JURISDICTIONAL ENTITY determines is for personal or incidental use.

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30 **NEW SECTION.** **Section 5. Requirements of buyer.** (1) A buyer of wildcrafted plant material shall

1 keep records of purchases or acquisitions of wildcrafted plant material for a period of 3 years from the date
2 of purchase or acquisition.

3 (2) Copies of the records must be made available to a law enforcement officer upon request.

4 (3) The records must include:

5 (a) the date of purchase or acquisition;

6 (b) the common name ~~and~~ or scientific name of the wildcrafted plant material;

7 (c) the number of the permit, if a number exists, or a copy of the permit or the written permission
8 authorizing the wildcrafting, unless the material came from property owned by the seller;

9 (d) the name, address, telephone number, and signature of the person from whom the wildcrafted
10 plant material was obtained;

11 (e) the license plate number of the vehicle that was used to deliver the wildcrafted plant material
12 to the buyer;

13 (f) the quantity and plant part of wildcrafted plant material purchased or acquired; and

14 (g) the name, address, and telephone number of the landowner from whose land the wildcrafted
15 plant material was harvested.

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17 **NEW SECTION. Section 6. Restriction on liability of landowner.** (1) A person who uses private
18 property for wildcrafting purposes, with or without permission, does so without any assurance from the
19 landowner that the property is safe for any purpose. The landowner owes the person no duty of care with
20 respect to the condition of the property, except that the landowner is liable to the person for any injury
21 to person or property for an act or omission that constitutes willful or wanton misconduct.

22 (2) A person who uses public property for wildcrafting purposes, with or without permission, does
23 so without any assurance from the landowner that the property is safe for any purpose. The landowner
24 owes the person no duty of care with respect to the condition of the property, except that the landowner
25 is liable to the person for any injury to person or property for an act or omission that constitutes willful
26 or wanton misconduct.

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28 **NEW SECTION. Section 7. Violations -- penalties.** (1) It is unlawful for a person to:

29 (a) fail to obtain permission from a landowner to enter property for purposes of wildcrafting;

30 (b) transport wildcrafted plant material without a bill of sale, a signed, written permission form,

1 or a permit from a landowner as provided in [section 3];

2 (c) have in the person's possession an amount of wildcrafted plant material that is in excess of
3 the amount granted in the bill of sale, written permission, or permit.

4 (2) A person who is found to have violated subsection (1) is guilty of a misdemeanor punishable
5 by a fine in an amount not less than \$100 or more than \$1,000 or by imprisonment in the county jail for
6 a term not to exceed 6 months or not less than 24 hours, or both, for a first offense. An offender
7 convicted of a second offense under this section shall be fined not less than \$500 or more than \$1,000
8 or be imprisoned in the county jail for a term not to exceed 1 year or not less than 6 months, or both.

9 (3) All wildcrafted plant material that is illegally wildcrafted, transported, or in the possession of
10 a person convicted under this section must be impounded.

11 (4) The incidental disturbance of plants by a lessee or permittee who is lawfully exercising rights
12 granted under the lease or permit is not considered to be in violation of [sections 1 through 7].

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14 NEW SECTION. SECTION 8. STATE-TRIBAL COOPERATIVE AGREEMENTS. THE STATE AND TRIBAL
15 GOVERNMENTS MAY ENTER INTO COOPERATIVE AGREEMENTS AS PROVIDED IN TITLE 18, CHAPTER 11.

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17 NEW SECTION. Section 9. Two-thirds vote required -- contingent voidness. Because [section
18 6(2)] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of
19 two-thirds of the members of each house of the legislature for passage. If [section 6(2)] is not approved
20 by at least two-thirds of the members of each house of the legislature, then [section 6(2)] is void.

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22 NEW SECTION. Section 10. Codification instruction. [Sections 1 through 7] are intended to be
23 codified as an integral part of Title 76, and the provisions of Title 76 apply to [sections 1 through 7].

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25 NEW SECTION. SECTION 11. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

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27 NEW SECTION. SECTION 12. NOTIFICATION TO TRIBAL GOVERNMENTS. THE SECRETARY OF STATE SHALL
28 SEND A COPY OF [THIS ACT] TO EACH TRIBAL GOVERNMENT LOCATED ON THE SEVEN MONTANA RESERVATIONS AND TO
29 THE LITTLE SHELL BAND OF CHIPPEWA.

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